

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

UNITED STATES OF AMERICA §
§
V. § **No. 5:18-CR-6-RWS-CMC**
§
ARMANDO MOYA §

**MEMORANDUM ORDER ADOPTING
REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**

The above-entitled and numbered criminal action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. On April 16, 2019, the Magistrate Judge issued a Report and Recommendation recommending Defendant Armando Moya's Motion to Suppress Statement be denied (Docket No. 80). The Report and Recommendation of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Defendant filed objections to the Report and Recommendation. The Court conducts a *de novo* review of the Magistrate Judge's findings and conclusions.

Defendant moves the Court to suppress his statements and the search of his cellular telephone, alleging he did not receive or voluntarily waive his right to remain silent and his statements were not voluntary. The Magistrate Judge conducted a hearing on the motion to suppress and set forth the facts in detail in a thorough, 23-page Report and Recommendation. The Magistrate Judge held the preponderance of the evidence shows Agent Maximo Mella read Defendant his *Miranda* rights, finding the testimony given by the Government witnesses outweighed the contradictory testimony given by Defendant. R&R at 19. The Magistrate Judge further held Defendant made a voluntary waiver of his *Miranda* rights and was not coerced or threatened by law

enforcement officers to do so. *Id.* at 20. According to the Magistrate Judge, the evidence does not support Defendant's assertion at the hearing that his consent to the search of his cell phone was not voluntary. *Id.* at 21. The Magistrate Judge then stated the preponderance of the evidence also shows Defendant's waiver of his rights was knowing and intelligent. *Id.* Finally, the Magistrate Judge held Defendant failed to point to evidence to support his assertion that his waiver was not voluntary, knowing, and intelligent. *Id.*

In his objections, Defendant asserts his testimony, as set forth at pages 5-11 of the Report and Recommendation, provides "ample evidence in support of his contentions that his statement and fruits of the search of his cellular telephone should be suppressed." Docket No. 81 at 1. Defendant further objects to the Magistrate Judge's conclusion that the Government met its burden of proving by a preponderance of the evidence he knowingly and voluntarily waived his rights prior to making the statements he sought to suppress. Defendant asserts the Government failed to satisfy such burden by the evidence presented at the suppression hearing.

The Court, having carefully reviewed the motion to suppress and response thereto, the Report and Recommendation, the Reporter's Transcript of Hearing on Defendant's Motion to Suppress, and Defendant's objections and response thereto, is of the opinion the findings and conclusions of the Magistrate Judge are correct. The Court agrees with the Magistrate Judge that the preponderance of the evidence shows Defendant was advised of his right to remain silent and that he knowingly, intelligently, and voluntarily waived that right. The Court also agrees with the Magistrate Judge that the preponderance of the evidence shows Defendant voluntarily consented to the search of his cell phone. The Court adopts the Magistrate Judge's report as the findings and conclusions of the Court.

Accordingly, it is

ORDERED that Defendant's objections are overruled, and Defendant's Motion to Suppress Statement (Docket No. 49) is **DENIED**.

So ORDERED and SIGNED this 16th day of May, 2019.

Robert W. Schroeder III
ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE